

REMARKS

Reconsideration of the pending application is respectfully requested in view of the following remarks.

Status of the Application

Claims 1-67 are pending. Of these, claims 1, 29 and 52 have been amended, and claims 65-67 are new. As the amended claims are fully supported by the application as filed, no new matter has been added to the application by way of these amendments.

Summary of the Office Action

Claims 1-17, 28-41, and 52-54 are provisionally rejected under the judicially-created doctrine of obviousness-type double patenting over claims 1-47 of copending U.S. Patent Application No. 10/434,776.

Claims 1 and 5-64 are further rejected under 35 U.S.C. § 102(b) as allegedly unpatentable over U.S. Patent 6,399,087 ("Zhang et al.").

Discussion

Turning initially to the substantive rejection, Applicants respectfully traverse the anticipation rejection.

Zhang et al. discloses and teaches compositions containing propofol—without more. Indeed, the sole focus of Zhang et al. is directed to obtaining a propofol formulation that is bacteriostatic or fungistatic. Zhang et al. purportedly teaches that the solution to microbial growth is to limit the content of lecithin and soybean oil in propofol formulations.

In marked contrast, the pending claims provide, in one aspect, a sterile pharmaceutical composition of propofol stored in a container, said composition comprising propofol and less than about 10% by weight solvent for propofol, said container in which said composition is stored comprising a closure for said container, wherein said closure is inert to propofol. *See claim 1.*

In contrast to the pending claims, Zhang et al. does not disclose any container at all, let alone provide any recognition or suggestion that a container, or the components used in the container, may somehow be relevant to its propofol compositions. Because of this deficiency, Zhang et al. would not motivate one skilled in the art to provide the subject matter described by the pending claims, e.g., a sterile pharmaceutical composition of propofol stored in a container, said composition comprising propofol and less than about 10% by weight solvent for propofol, said container in which said composition is stored comprising a closure for said container, wherein said closure is inert to propofol. *See, e.g., claim 1.*

Further in this regard, Zhang et al. fails to recognize that degradation or potency loss of a propofol composition may occur despite providing a propofol formulation having a relatively low amount of solvent. Thus, Zhang et al. fails to motivate one skilled in the art to provide the invention as claimed which includes, *inter alia*, a sterile pharmaceutical composition of propofol stored in a container, said composition comprising propofol and less than about 10% by weight solvent for propofol, said container in which said composition is stored comprising a closure for said container, wherein said closure is inert to propofol. *See, e.g., claim 1.*

In view of the foregoing, Applicants respectfully submit that Zhang et al. fails to anticipate the claimed inventions, and further fails to render the inventions obvious. Withdrawal of the anticipation rejection is thus respectfully requested.

In regard to the obviousness-type double patenting rejection, Applicants may file a terminal disclaimer addressing this rejection upon receipt of an indication of allowable subject matter.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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